



Kateryna Holzer

CARBON-RELATED BORDER ADJUSTMENT AND WTO LAW



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Foreword

Thomas Cottier

The challenges of climate change mitigation and reduction of CO₂ emissions and other greenhouse gases call for a detailed analysis of the role and potential of international trade regulation, within and outside of the World Trade Organization. While multilateral climate policies are supposed to be shaped within the UN Framework Convention on Climate Change and the current and future Kyoto Protocol, trade rules remain of key importance as they control the importation and exportation of products under varying production and process standards (PPMs). The first best solution clearly consists of multilaterally agreed policies and standards. Yet, the reality of competing economies and free-riding calls for the exploration of to what extent countries can unilaterally and lawfully impose standards on importation, or impose taxation, seeking to create a level playing field and avoiding carbon leakage. The scope and limits of such measures in terms of extraterritorial reach and effects are essentially defined by WTO law. The present book by Dr Kateryna Holzer explores the scope for such measures in great detail, and offers legal guidance to policymakers and adjudicators in assessing so called Border Adjustment Measures (BAMs), setting off the costs of carbon mitigating measures imposed on domestic industries. The research focuses on trade in goods.

The research was funded by the Swiss National Research Foundation, NCCR Climate, University of Bern, over a period of four years and conducted at the World Trade Institute within the Work Package on Trade and Climate Change of the NCCR Trade Regulation. It is an honour to write a few lines in recognition of the work of the author. She excelled as a student of MILE programme (Master of International Law and Economics) at the WTI. She eventually joined WTI staff. While working on her PhD thesis, she raised a family with two small children, and was an active staff member significantly contributing to the research effort of the Institute and to the work for the Intergovernmental Panel on Climate Change (IPPC) as a contributing author of the Fifth Assessment Report (AR5) of Working Group III, assessing the role and potential of regional

trade agreements in climate change mitigation. Her book is essentially based upon her PhD research. It makes an essential contribution to the field.

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While thankfully acknowledging the advice of many, all errors and shortcomings remain my own.

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Abbreviations

AB	Appellate Body
ACESA	American Clean Energy and Security Act
AD(s)	Antidumping duty(ies)
ADA	Anti-dumping Agreement (Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994)
APEC	Asia-Pacific Economic Cooperation
Art.	Article
BA	Border adjustment
BAM(s)	Border adjustment measure(s)
BASIC	Bloc of four largest developing countries – Brazil, South Africa, India and China
BAT	Best available technology
BCAs	Border carbon adjustments
BTA(s)	Border tax adjustment(s)
CAFE	Corporate Average Fuel Economy standard
CBDR	Common but differentiated responsibility
CDM	Clean Development Mechanism
CERs	Certified emission reductions
COP	Conference of Parties
CRTA	Committee on Regional Trade Agreements
CTE	Committee on Trade and Environment
CU	Customs union
CVD(s)	Countervailing duty(ies)
DSB	Dispute settlement body
DSU	Dispute Settlement Understanding
EC	European Community/European Communities
ECJ	European Court of Justice
ed/eds	Editor/editors
EGS	Environmental goods and services

EISA	Energy Independence and Security Act
EPA	US Environmental Protection Agency
ETS	Emissions trading scheme
EU	European Union
ff.	Folio ('and pages following')
FTA	Free trade area/agreement
G-20	Group of twenty major economies
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	Gross domestic product
GHG	Greenhouse gases
GSP	Generalized System of Preferences
HS	Harmonized Commodity Description and Coding System of the World Customs Organization
ibid.	Ibidem ('in the same place')
ICAO	International Civil Aviation Organization
ICTSD	International Centre for Trade and Sustainable Development
IIFT	Indian Institute of Foreign Trade
IPCC	Intergovernmental Panel on Climate Change
IPR	Intellectual property right
ISO	International Organization for Standardization
JI	Joint Implementation
LCFS	Low-Carbon Fuel Standard
LDC	Least developed country
MEA	Multinational environmental agreement
MFN	Most-favoured nation principle/treatment
MRA	Mutual recognition agreement
MRV	Monitoring, reporting and verification procedures
NAFTA	North American Free Trade Agreement
NAMA	Nationally appropriate mitigation action
NGO	Non-governmental organization
no.	Number
NPA	Non-physical aspect
NPA measure	National measure related to an NPA
NT	National treatment

ODC	Ozone-depleting chemicals
ODS	Ozone-depleting substance
OECD	Organization for Economic Cooperation and Development
PPM	Process and production method
PPM measure	National measure related to a PPM
Ppm	Parts per million
PPP	Polluter pays principle
PTA	Preferential trade agreement
RTA	Regional trade agreement
SCM Agreement	Agreement on Subsidies and Countervailing Measures
SPS Agreement	Agreement on the Application of Sanitary and Phytosanitary Measures
SPS regulations	Sanitary and phytosanitary regulations
STO	Specific trade obligation in a multilateral environmental agreement
TBT Agreement	Agreement on Technical Barriers to Trade
TPP	Trans-Pacific Partnership
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
TTIP	Transatlantic Trade and Investment Partnership
t	Ton
UN	United Nations
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
US(A)	United States (of America)
US\$	United States dollars
VAT	Value-added tax
VCLT	Vienna Convention on the Law of the Treaties
vol.	Volume
WMO	World Meteorological Organization
WTO	World Trade Organization

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